

SENATE BILL No. 1091

September 21, 2016, Introduced by Senator EMMONS and referred to the Committee on Families, Seniors and Human Services.

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 19a of chapter XIIA (MCL 712A.19a), as amended
by 2012 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER XIIA

1
2 Sec. 19a. (1) Subject to subsection (2), if a child remains in
3 foster care and parental rights to the child have not been
4 terminated, the court shall conduct a permanency planning hearing
5 within 12 months after the child was removed from his or her home.
6 Subsequent permanency planning hearings shall be held no later than
7 every 12 months after each preceding permanency planning hearing
8 during the continuation of foster care. If proper notice for a
9 permanency planning hearing is provided, a permanency planning
10 hearing may be combined with a review hearing held under section

1 19(2) to (4) of this chapter, but no later than 12 months from the
2 removal of the child from his or her home, from the preceding
3 permanency planning hearing, or from the number of days required
4 under subsection (2). A permanency planning hearing shall not be
5 canceled or delayed beyond the number of months required by this
6 subsection or days as required under subsection (2), regardless of
7 whether there is a petition for termination of parental rights
8 pending.

9 (2) The court shall conduct a permanency planning hearing
10 within 30 days after there is a judicial determination that
11 reasonable efforts to reunite the child and family are not
12 required. Reasonable efforts to reunify the child and family must
13 be made in all cases except if any of the following apply:

14 (a) There is a judicial determination that the parent has
15 subjected the child to aggravated circumstances as provided in
16 section 18(1) and (2) of the child protection law, 1975 PA 238, MCL
17 722.638.

18 (b) The parent has been convicted of 1 or more of the
19 following:

20 (i) Murder of another child of the parent.

21 (ii) Voluntary manslaughter of another child of the parent.

22 (iii) Aiding or abetting in the murder of another child of the
23 parent or voluntary manslaughter of another child of the parent,
24 the attempted murder of the child or another child of the parent,
25 or the conspiracy or solicitation to commit the murder of the child
26 or another child of the parent.

27 (iv) A felony assault that results in serious bodily injury to

1 the child or another child of the parent.

2 (c) The parent has had rights to the child's siblings
3 involuntarily terminated.

4 (d) The parent is required by court order to register under
5 the sex offenders registration act.

6 (3) A permanency planning hearing shall be conducted to review
7 the status of the child and the progress being made toward the
8 child's return home or to show why the child should not be placed
9 in the permanent custody of the court. The court shall obtain the
10 child's views regarding the permanency plan in a manner that is
11 appropriate to the child's age. In the case of a child who will not
12 be returned home, the court shall consider in-state and out-of-
13 state placement options. In the case of a child placed out-of-
14 state, the court shall determine whether the out-of-state placement
15 continues to be appropriate and in the child's best interests. The
16 court shall ensure that the agency is providing appropriate
17 services to assist a child who will transition from foster care to
18 independent living.

19 (4) AT OR BEFORE EACH PERMANENCY PLANNING HEARING, THE COURT
20 SHALL DETERMINE WHETHER THE AGENCY HAS MADE REASONABLE EFFORTS TO
21 FINALIZE THE PERMANENCY PLAN. AT THE HEARING, THE COURT SHALL
22 DETERMINE WHETHER AND, IF APPLICABLE, WHEN THE FOLLOWING MUST
23 OCCUR:

24 (A) THE CHILD MAY BE RETURNED TO THE PARENT, GUARDIAN, OR
25 LEGAL CUSTODIAN.

26 (B) A PETITION TO TERMINATE PARENTAL RIGHTS SHOULD BE FILED.

27 (C) THE CHILD MAY BE PLACED IN A LEGAL GUARDIANSHIP.

1 (D) THE CHILD MAY BE PERMANENTLY PLACED WITH A FIT AND WILLING
2 RELATIVE.

3 (E) THE CHILD MAY BE PLACED IN ANOTHER PLANNED PERMANENT
4 LIVING ARRANGEMENT, BUT ONLY IN THOSE CASES WHERE THE AGENCY HAS
5 DOCUMENTED TO THE COURT A COMPELLING REASON FOR DETERMINING THAT IT
6 WOULD NOT BE IN THE BEST INTEREST OF THE CHILD TO FOLLOW 1 OF THE
7 OPTIONS LISTED IN SUBDIVISIONS (A) TO (D).

8 (5) THE COURT SHALL DETERMINE WHETHER OR NOT THE AGENCY,
9 FOSTER HOME, OR INSTITUTIONAL PLACEMENT HAS FOLLOWED THE REASONABLE
10 AND PRUDENT PARENTING STANDARD THAT THE CHILD HAS HAD REGULAR
11 OPPORTUNITIES TO ENGAGE IN AGE OR DEVELOPMENTALLY APPROPRIATE
12 ACTIVITIES.

13 (6) ~~(4)~~ Not less than 14 days before a permanency planning
14 hearing, written notice of the hearing and a statement of the
15 purposes of the hearing, including a notice that the hearing may
16 result in further proceedings to terminate parental rights, shall
17 be served upon all of the following:

18 (a) The agency. The agency shall advise the child of the
19 hearing if the child is 11 years of age or older.

20 (b) The foster parent or custodian of the child.

21 (c) If the parental rights to the child have not been
22 terminated, the child's parents.

23 (d) If the child has a guardian, the guardian for the child.

24 (e) If the child has a guardian ad litem, the guardian ad
25 litem for the child.

26 (f) If tribal affiliation has been determined, the elected
27 leader of the Indian tribe.

1 (g) The attorney for the child, the attorneys for each party,
2 and the prosecuting attorney if the prosecuting attorney has
3 appeared in the case.

4 (h) If the child is 11 years of age or older, the child.

5 (i) Other persons as the court may direct.

6 (7) ~~(5)~~—If parental rights to the child have not been
7 terminated and the court determines at a permanency planning
8 hearing that the return of the child to his or her parent would not
9 cause a substantial risk of harm to the child's life, physical
10 health, or mental well-being, the court shall order the child
11 returned to his or her parent. In determining whether the return of
12 the child would cause a substantial risk of harm to the child, the
13 court shall view the failure of the parent to substantially comply
14 with the terms and conditions of the case service plan prepared
15 under section 18f of this chapter as evidence that return of the
16 child to his or her parent would cause a substantial risk of harm
17 to the child's life, physical health, or mental well-being. In
18 addition to considering conduct of the parent as evidence of
19 substantial risk of harm, the court shall consider any condition or
20 circumstance of the child that may be evidence that a return to the
21 parent would cause a substantial risk of harm to the child's life,
22 physical health, or mental well-being.

23 (8) ~~(6)~~—If the court determines at a permanency planning
24 hearing that a child should not be returned to his or her parent,
25 the court may order the agency to initiate proceedings to terminate
26 parental rights. Except as otherwise provided in this subsection,
27 if the child has been in foster care under the responsibility of

1 the state for 15 of the most recent 22 months, the court shall
2 order the agency to initiate proceedings to terminate parental
3 rights. The court is not required to order the agency to initiate
4 proceedings to terminate parental rights if 1 or more of the
5 following apply:

6 (a) The child is being cared for by relatives.

7 (b) The case service plan documents a compelling reason for
8 determining that filing a petition to terminate parental rights
9 would not be in the best interest of the child. Compelling reasons
10 for not filing a petition to terminate parental rights include, but
11 are not limited to, all of the following:

12 (i) Adoption is not the appropriate permanency goal for the
13 child.

14 (ii) No grounds to file a petition to terminate parental
15 rights exist.

16 (iii) The child is an unaccompanied refugee minor as defined
17 in 45 CFR 400.11.

18 (iv) There are international legal obligations or compelling
19 foreign policy reasons that preclude terminating parental rights.

20 (c) The state has not provided the child's family, consistent
21 with the time period in the case service plan, with the services
22 the state considers necessary for the child's safe return to his or
23 her home, if reasonable efforts are required.

24 (9) ~~(7)~~—If the agency demonstrates under subsection ~~(6)~~—(8)
25 that initiating the termination of parental rights to the child is
26 clearly not in the child's best interests, or the court does not
27 order the agency to initiate termination of parental rights to the

1 child under subsection ~~(6)~~, **(8)**, then the court shall order 1 or
2 more of the following alternative placement plans:

3 (a) If the court determines that other permanent placement is
4 not possible, the child's placement in foster care shall continue
5 for a limited period to be stated by the court.

6 (b) If the court determines that it is in the child's best
7 interests based upon compelling reasons, the child's placement in
8 foster care may continue on a long-term basis.

9 (c) Subject to subsection ~~(9)~~, **(11)**, if the court determines
10 that it is in the child's best interests, appoint a guardian for
11 the child, which guardianship may continue until the child is
12 emancipated.

13 **(10)** ~~(8)~~—A guardian appointed under subsection ~~(7)(e)~~ **(9) (C)**
14 has all of the powers and duties set forth under section 15 of the
15 estates and protected individuals code, 1998 PA 386, MCL 700.5215.

16 **(11)** ~~(9)~~—If a child is placed in a guardian's or a proposed
17 guardian's home under subsection ~~(7)(e)~~, **(9) (C)**, the court shall
18 order the department ~~of human services~~ to perform an investigation
19 and file a written report of the investigation for a review under
20 subsection ~~(10)~~ **(12)** and the court shall order the department ~~of~~
21 ~~human services~~ to do all of the following:

22 (a) Perform a criminal record check within 7 days.

23 (b) Perform a central registry clearance within 7 days.

24 (c) Perform a home study and file a copy of the home study
25 with the court within 30 days unless a home study has been
26 performed within the immediately preceding 365 days, under section
27 ~~13a(10)~~ **13A(11)** of this chapter. If a home study has been performed

1 within the immediately preceding 365 days, a copy of that home
2 study shall be submitted to the court.

3 (12) ~~(10)~~—The court's jurisdiction over a juvenile under
4 section 2(b) of this chapter shall be terminated after the court
5 appoints a guardian under this section and conducts a review
6 hearing under section 19 of this chapter, unless the juvenile is
7 released sooner by the court.

8 (13) ~~(11)~~—The court's jurisdiction over a guardianship created
9 under this section shall continue until released by court order.
10 The court shall review a guardianship created under this section
11 annually and may conduct additional reviews as the court considers
12 necessary. The court may order the department ~~of human services~~ or
13 a court employee to conduct an investigation and file a written
14 report of the investigation.

15 (14) ~~(12)~~—In making the determinations under this section, the
16 court shall consider any written or oral information concerning the
17 child from the child's parent, guardian, custodian, foster parent,
18 child caring institution, relative with whom the child is placed,
19 or guardian ad litem in addition to any other evidence, including
20 the appropriateness of parenting time, offered at the hearing.

21 (15) ~~(13)~~—The court may, on its own motion or upon petition
22 from the department ~~of human services~~ or the child's lawyer
23 guardian ad litem, hold a hearing to determine whether a
24 guardianship appointed under this section shall be revoked.

25 (16) ~~(14)~~—A guardian may petition the court for permission to
26 terminate the guardianship. A petition may include a request for
27 appointment of a successor guardian.

1 (17) ~~(15)~~ After notice and hearing on a petition for
2 revocation or permission to terminate the guardianship, if the
3 court finds by a preponderance of evidence that continuation of the
4 guardianship is not in the child's best interests, the court shall
5 revoke or terminate the guardianship and appoint a successor
6 guardian or restore temporary legal custody to the department. ~~of~~
7 ~~human services.~~

8 Enacting section 1. This amendatory act takes effect 90 days
9 after the date it is enacted into law.